5-10-2010

State v. Padilla Appellant's Brief Dckt. 38899

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 38899 & 38900
	)	
v.	)	
	)	
TARANGO DEFOREST PADILLA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Statutes

STATEMENT OF THE CASE

Nature of the Case

Tarango Deforest Padilla appeals from two Judgments of Conviction Upon A Guilty Verdict To One Felony Count, And Order Of Commitment. Mr. Padilla asserts that the district court erred when it denied his motion in limine to prevent the State from presenting any items purported to be pieces of spark plug and a flashlight, because such evidence/testimony would be both irrelevant and unfairly prejudicial in his trial for wrongful taking or obtaining financial transaction cards. He further asserts that the State will be unable to show that the district court's error is harmless beyond a reasonable doubt.

Statement of the Facts and Course of Proceedings

This appeal involves district court case numbers CR 2009-8325 (Supreme Court Docket No. 38899) and CR 2009-13710 (Supreme Court Docket No. 38900).[1] (R., pp.364-65.) At the trial court, the parties agreed (R., pp.142-143, 443-444) and the district court ordered that the cases be consolidated because the charges arose out of the same incident (R., pp.144-146, 445-447). The Supreme Court consolidated the district court cases for appeal. (R., pp.364-35.)

In 38899, the prosecuting attorney charged Mr. Padilla with one count of grand theft. (R., pp.46-48.) The State accused Mr. Padilla of wrongfully taking or obtaining Thomas Mauch's financial transaction card with the intent of permanently depriving him of his property. (R., p.47.) The State amended the Information to include a persistent violator enhancement. (R., pp.85-88.)

In 38900, the prosecuting attorney charged Mr. Padilla with one count of grand theft. (R., pp.421-423.) The State accused Mr. Padilla of wrongfully taking or obtaining Jamie Labrum's financial transaction card with the intent of permanently depriving her of her property. (R., p.422.) The State amended the Information to include a persistent violator enhancement. (R., pp.493-496.)

Mr. Padilla moved for a motion in limine to prevent the State from presenting any items purported to be pieces of spark plug ceramic, cash, a wallet, or a flashlight. (R., pp.208-210, 523-525; Tr.02/15/2011, p.19, Ls.11-14.) He argued that the evidence was both irrelevant and unfairly prejudicial. (R., pp.523-525.)

The State agreed not to present any evidence regarding the wallet.[2] (Tr.02/15/2011, p.19, Ls.18-22.) Mr. Padilla requested to limit the State's evidence to grand theft by possession of the financial transaction card, as opposed to allegedly committing burglary by entering the vehicles and taking the cards, a location the card owners last believed they left them. (Tr.02/15/2011, p.20, L.9-p.22, L.4.) The State conceded that it did not charge Mr. Padilla with vehicular burglary. (Tr.02/15/2011, p.23, Ls.7-11.) However, the State fully intended to argue that Mr. Padilla did in fact commit burglary and, although, he did not need to use the spark plug to gain entry into the vehicles because the vehicles were unlocked, he had the intent to unlawfully enter the vehicles to obtain the financial transaction cards. (Tr.02/15/2011, p.23, Ls.9-16.)

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[1] When necessary, counsel will refer to the Supreme Court Docket Numbers in referencing the underlying cases: Supreme Court Docket No. 38899 (CR 2009-8325) and Supreme Court Docket No. 38900 (CR 2009-13710).

[2] Although the State agreed and the court ordered that no evidence of the wallet would be presented to the jury, the state's witnesses testified about the wallet. (Tr., p.34, Ls.13-16, p.35, Ls.2-3, 13, p.47, Ls.21-23.) Defense counsel did not object.

In response, Mr. Padilla highlighted that it was undisputed that he did not use the spark plug to break any windows. (Tr.02/15/2011, p.24, Ls.16-22.) No glass had been broken on either vehicle. (Tr.02/15/2011, p.24, Ls.16-17.) Moreover, both of the witnesses admitted that their vehicles were unlocked. (Tr., p.23, Ls.12-13.) Mr. Padilla also objected to the flashlight being admitted because there was no connection to him and the light that the officer discovered in a backyard while looking for Mr. Padilla. (Tr.02/15/2011, p.24, Ls.23-25.)

The district court found that Mr. Padilla had been put on notice that the State charged him with wrongfully taking or obtaining the financial transaction, not with unlawfully possessing the financial transaction card.[3] (Tr.02/15/2011, p.26, L.16-p.27, L.6.) The district court then analyzed the issue of "whether the evidence would be unfairly prejudicial as evidence of an uncharged burglary and potentially inflammatory." (Tr.02/15/2011, p.27, Ls.7-11.) The court determined that the two items were not bad acts, part of the *res gestae,* temporarily connected, and thereby admissible. (Tr.02/15/2011, p.28, Ls.14-17.) The court stated, "[the items] don't go to show some type of independent showing of bad actor to cause the jury to make a determination that Mr. Padilla is somehow being convicted because he's just a bad egg and does bad things, but rather to show the potentialities of this conduct as it has been alleged." (Tr.02/15/2011, p.28, L.24-p.29, L.5.)

The jury found Mr. Padilla guilty of both grand theft charges and with being a persistent violator. (R., pp.315-317, 630-632.) The district court imposed concurrent

[3] On appeal, Mr. Padilla does not dispute that the Information should have provided his trial counsel with notice that he was not being charged with criminal possession of a financial transaction card (I.C. § 18-3125). Instead the State had provided notice and charged Mr. Padilla with taking or obtaining a financial transaction card (I.C. §§ 18-2403 (1), 18-2407 (1)(b)).

unified sentences of fifteen years, with seven years fixed, on both cases. (Tr., p.587, Ls.7-13; R., pp.338-342, 638-642.) Mr. Padilla timely appealed the Judgments of Conviction. (R., pp.350-354, 648-652.)

Mr. Padilla filed Motions For Reconsideration Of Sentence Under Rule 35. (R., pp.346-348, 644-647.) The district court denied the motions. (R., pp.366-370, 664-668.)

ISSUE

Did the district court err when it denied Mr. Padilla's motion in limine to prevent the State from presenting testimony or evidence about broken pieces of a spark plug and a flashlight because the evidence was both irrelevant and unfairly prejudicial?

ARGUMENT

The District Court Erred When It Denied Mr. Padilla's Motion In Limine To Prevent The State From Presenting Testimony Or Evidence About Broken Pieces Of A Spark Plug And A Flashlight Because The Evidence Was Both Irrelevant And Unfairly Prejudicial

A. Introduction

Mr. Padilla asserts that the district court erred when it denied his motion in limine to prevent the State from presenting testimony or evidence of a spark plug and a flashlight because such evidence/testimony would be both irrelevant and unfairly prejudicial in his trial for wrongful taking or obtaining financial transaction cards. He further asserts that the State will be unable to show that the district court's error is harmless beyond a reasonable doubt.

B. Standard Of Review

This Court reviews a trial court's decision to admit evidence for abuse of discretion. *State v. Grist*, 147 Idaho 49, 51 (2009) (citing *State v. Field,* 144 Idaho 559, 564 (2007) (citing *State v. Robinett,* 141 Idaho 110, 112 (2005)). This Court must examine whether: (1) the trial court correctly perceived the issue as discretionary; (2) the trial court acted within the outer bounds of its discretion and with applicable legal standards; and (3) the trial court reached its decision through an exercise of reason. *Id.* (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991) (citing *State v. Hedger,* 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)). Upon review of the district court's determination to admit bad acts evidence pursuant to I.R.E. 404(b), this Court reviews the district court's relevancy determination *de novo*. *See State v. Rossignol*, 147 Idaho 818, 824, (Ct. App. 2009). The district

court's balancing of the potential for prejudice against the probative value of the evidence is reviewed for an abuse of discretion. *Grist*, 147 Idaho at 52.

C. The District Court Erred By Admitting Highly Prejudicial Rule 404(b) Evidence That Was Not Relevant To Any Issue Other Than Propensity

It is a fundamental tenet of the American legal system that a defendant may only be convicted based upon proof that he committed the crime with which he is charged and not based upon poor character. *State v. Wood*, 126 Idaho 241, 244 (Ct. App. 1994). Evidence of misconduct not charged in an underlying offense may have an unjust influence on the jurors and may lead them to determine guilt based upon either: (1) a presumption that if the defendant did it before, he must have done it this time; or (2) an opinion that it does not really matter whether the defendant committed the charged crime because he deserves to be punished anyhow for other bad acts. *Id.* at 244-45. "The prejudicial effect of [character evidence] is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character." *Grist*, 147 Idaho at 52 (quoting *State v. Wrenn*, 99 Idaho 506, 510, 584 P.2d 1231, 1235 (1978)). Therefore, I.R.E. 404 precludes the use of character evidence or other misconduct evidence to imply that the defendant must have acted consistently with those past acts or traits. *Id.*

I.R.E. 404 provides in pertinent part:

> (b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that the prosecution in a criminal case shall file and serve notice reasonably in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

I.R.E. 404. "Admissibility of evidence of other crimes, wrongs, or acts when offered for a permitted purpose is subject to a two-tiered analysis." *Grist*, 147 Idaho at 52. The admissibility of evidence offered for I.R.E. 404(b) purposes must pass a two-step analysis. *State v. Johnson,* 148 Idaho 664, 667, 227 P.3d 918, 921 (2010); *State v. Grist,* 147 Idaho 49, 52, 205 P.3d 1185, 1188 (2009).

> First, the evidence of prior misconduct must be sufficiently established as fact and relevant as a matter of law to a material and disputed issue other than the character or criminal propensity of the defendant. *Johnson,* 148 Idaho at 667, 227 P.3d at 921; *Grist,* 147 Idaho at 52, 205 P.3d at 1188. For the second step, there must be a determination under I.R.E. 403 regarding whether the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Johnson,* 148 Idaho at 667, 227 P.3d at 921; *Grist,* 147 Idaho at 52, 205 P.3d at 1188.

State v. Pepcorn, 2012 WL 975495 (March 23, 2012) (not official yet).

"Evidence of uncharged misconduct may not be admitted pursuant to I.R.E. 404(b) when its probative value is entirely dependent upon its tendency to demonstrate the defendant's propensity to engage in such behavior." *Id.* In order to show that the proposed evidence demonstrates a "common scheme or plan," the State must demonstrate such a plan "embrac[es] the commission of two or more crimes so related to each other that proof of one tends to establish the other . . . ." *Grist*, 147 Idaho at 54-55 (citations omitted.)

Res gestae refers to events or occurrences that are so related and in such close proximity in time to the charged offense that they complete, "the story of the crime on trial by placing it in the context of nearby and nearly contemporaneous happenings." *See State v. Blackstead*, 126 Idaho 14, 17-18 (Ct. App. 1994). Generally, events occurring at a different time or on a different day do not fall within the *res gestae* of the charged offense; and prior bad acts evidence should be admitted to show *res gestae*

only when "the charged act and the uncharged act are so inseparably connected that the jury cannot be given a rational and complete presentation of the alleged crime without reference to the uncharged misconduct." *Id.* at 19.

In *Blackstead,* the only evidence that the court determined constituted *res gestae* was evidence of drug use that was immediately prior in time or contemporaneous with the charged offense of lewd conduct – the alleged victim was actually under the influence of these substances when the alleged lewd conduct occurred. *Blackstead,* 126 Idaho at 16. In addition, the *Blackstead* Court recognized a further conceptual limitation on the proper scope of admissibility of *res gestae* evidence. Specifically, this evidence must be so interconnected with the charged offense, "that a complete account of the charged offense could not be given to the jury without disclosure of the [uncharged acts]." *Id.* at 18.

The articulation of the *res gestae* principle given in *Washington v. State*, 118 So.2d 650, 653 (Fla. App. 1960), is particularly helpful on this point:

> "*Res Gestae*," is a Latin term translated literally as "things done"; and it embraces circumstances, facts, and declarations which are incident to the main facts in the transaction and which are necessary to demonstrate its character. It also includes words, declarations, and acts so closely connected with a main fact in issue as to constitute part of the transaction.
>
> Statements or acts of the injured person made or done at the time immediately prior to the offense or so near to it as to preclude the idea of forethought, and tending to elucidate a fact in issue may be admissible as part of the res gestae. *Further, the rule is well recognized that statements, exclamations, acts, and conduct of the injured person at a time substantially contemporaneous with the offense and so connected to the crime as to have a relevant bearing on it may be held admissible as part of the res gestae, whether they incriminate the accused or exonerate him.*

Washington, 118 So.2d at 653 (emphasis added).

The district court analyzed the issue of "whether the evidence would be unfairly prejudicial as evidence of an uncharged burglary and potentially inflammatory."

(Tr.02/15/2011, p.27, Ls.7-11.) The court concluded that the evidence of the spark plug and the flashlight were part of the *res gestae* and the admission of the evidence was not overly prejudicial. (Tr.02/15/2011, p.28, L.24-p.29, L.5.)

1. Evidence Of Broken Pieces Of Spark Plug Should Not Have Been Admitted

At trial, Thomas Mauch testified that he had left his car unlocked leaving his wallet and financial transaction cards therein. (Tr.02/15/2011, p.38, Ls.9-15, p.43, Ls.5-9.) Jamie Labrum also testified at trial that she too had left her vehicle unlocked with her financial transaction cards left in the center console. (Tr.02/15/2011, p.47, Ls.21-23, p.48, Ls.18-21.) Mr. Mauch testified that no damage had been done to his car, nor were any windows broken. (Tr.02/15/2011, p.38, Ls.16-18.) The State did not put on any evidence that someone entered the vehicles through any other means then the unlocked doors. (*See generally* Trial Transcript.)

Officer Gonzales was the lead officer on this case. (Tr.02/15/2011, p.64, Ls.7-9.) He testified that he found broken pieces of spark plug both on the ground near Mr. Padilla and on his person. (Tr.02/15/2011, p.86, Ls.5-8.) Over an objection by counsel, Officer Gonzales testified that he had been informed through his training and educational materials that people are finding and using different techniques "to indeed commit crimes." (Tr.02/15/2011, p.86, Ls.12-19.) Moreover, individuals use spark plug pieces to break glass on windows. (Tr., p.86, Ls.21-23.) Officer Gonzales admitted that he had no practical experience with broken glass from spark plugs, however, he had read about it, somewhere. (Tr., p.87, Ls.34.) After identifying the spark plug involved in this case, Officer Gonzales informed the jury that spark plug pieces are commonly referred to as "Ninja rocks." (Tr.02/15/2011, p.88, Ls.9-13.) Then Officer Gonzales

confirmed for the jury that there would be no legitimate reason for someone to have these broken pieces of spark plug except to break windows. (Tr.02/15/2011, p.88, Ls.14-20.)

The testimony that the State elicited and planned to elicit was not necessary to explain the crime nor without this testimony would the jurors been left with an incomplete story. The testimony was not part of the *res gestae*. Additionally, the officer's testimony demonstrated that by possessing the Ninja rocks, Mr. Padilla was committing another crime. The City of Twin Falls had charged Mr. Padilla with the crime of possession of burglary tools and had dismissed the charge against him. (Tr.02/15/2011, p.181, L.21-p.182, L.4; Court's A (exhibit).) Possession of burglary tools is a violation of Idaho Code § 18-1406 and constitutes a misdemeanor. I.C. § 18-1406. Therefore, the possession of these items as the State argued constituted a bad act. Moreover, there was no evidence that the spark plug pieces had been used during the commission of this crime and, therefore, simply were not relevant to the ultimate question of whether Mr. Padilla took or obtained financial transaction cards.

The presentation of the evidence of the spark plug was overly prejudicial because it painted Mr. Padilla as a bad guy who is roaming the streets looking for the right car to break the glass with his Ninja Rocks at any given moment. Had there been some evidence that these cars were entered by any other means than an unlocked door - there might be a different question. It was undisputed that Mr. Padilla did not use the spark plug to break any windows. (Tr.02/15/2011, p.24, Ls.16-22.) No glass had been broken on either vehicle. (Tr.02/15/2011, p.24, Ls.16-17.) Both of the witnesses admitted that their vehicles were unlocked. (Tr., p.23, Ls.12-13.) The State did not need to prove an unlawful entry into a vehicle in this case. The State charged

Mr. Padilla with unlawful taking a financial transaction card, not with unlawful entry into a vehicle (a burglary). Nor did the State pursue a charge of unlawful possession of burglary tools. The district court erred allowing evidence about the broken pieces of spark plug.

2. Evidence Of A Flashlight Should Not Have Been Admitted

Mr. Padilla also objected to the flashlight being admitted because their was no connection to him and the light that the officer discovered in a backyard while looking for Mr. Padilla. (Tr.02/15/2011, p.24, Ls.23-25.) The district court erred denying Mr. Padilla's motion in limine to prohibit the State from presenting evidence of a found flashlight. The flashlight was irrelevant to the crime charged and, even if relevant, was not part of the *res gestae* of this case and the State's use of the evidence was overly prejudicial.

Officer Gonzales testified that he found a flashlight. (Tr.02/15/2011, p.95, Ls.6-9.) The officer did not see the flashlight near or around Mr. Padilla. (Tr.02/15/2011, p.97, Ls.3-6.) While looking for Mr. Padilla, Officer Gonzales found a flashlight in someone's private backyard and picked it up. (Tr.02/15/2011, p.97, Ls.7-10, 21-23.) The officer never inquired from the property owners where he found the flashlight, if the instrument belonged to them. (Tr.02/15/2011, p.97, L.24-p.98, L.2.) The officer also never had the flashlight examined for fingerprint evidence. (Tr.02/15/2011, p.98, Ls.3-5.) After the district court admitted the flashlight into evidence, Officer Gonzales said the flashlight was of interest to him because when people are lurking at night they usually have a flashlight. (Tr.02/15/2011, p.98, Ls.21-25.) Additionally, he has often times found drugs, paraphernalia, and other items in a flashlight. (Tr.02/15/2011, p.98, L.25-p.99, L.3.)

The district court erred when it admitted into evidence the flashlight and authorized the testimony of Officer Gonzales regarding the flashlight. There was no evidence making the flashlight relevant in this case. There was no connection between this case and the flashlight. There was no evidence that the officer didn't just take a flashlight from a citizen of the community by removing it from their backyard. There is no evidence that the flashlight had any connection to Mr. Padilla. The flashlight was irrelevant.

Assuming the flashlight was relevant, as argued in the above section C1 and for the same reasons articulated therein; the flashlight was not part of the *res gestae* and was overly prejudicial. The crime involving the flashlight had been dismissed as part of a plea agreement in a different case. The flashlight was not needed to prove any element of the crime charged in this case. Moreover, the admission of the item and testimony allowed the State to argue that Mr. Padilla was out lurking for cars, walking around with a flashlight to break into people's cars, and by the way he may be involved with drugs because it is commonly used to hide items in it. The district court erred allowing the admission of the flashlight and testimony relating to it.

D. The State Will Be Unable To Meet Its Burden Of Proving The Error Was Harmless Beyond A Reasonable Doubt

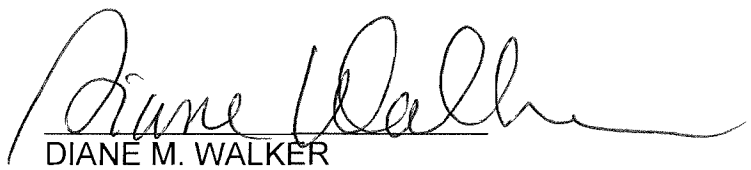
"If the alleged error was followed by a contemporaneous objection at trial, appellate courts shall employ the harmless error test articulated in *Chapman* [*v. California*, 386 U.S. 18, 24 (1967)]. Where the defendant meets his initial burden of showing that a violation occurred, the State then has the burden of demonstrating to the appellate court beyond a reasonable doubt that the constitutional violation did not contribute to the jury's verdict." *State v. Perry,* 150 Idaho 209, 227 (2010). The State

was allowed to present irrelevant and overly prejudicial testimony. The State will be unable to prove, beyond a reasonable doubt, this information did not weigh on the conscience of the jurors in determining Mr. Padilla's guilt and did not contribute to the verdict.

CONCLUSION

Mr. Padilla requests that his judgments of conviction be vacated and his case remanded for further proceedings.

DATED this 10th day of May, 2012.



DIANE M. WALKER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of May, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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